

December 7, 1971

OPINION LETTER NO. 458
Answer by Letter - Klaffenbach



Mr. Joseph Jaeger, Jr., Director
Missouri State Park Board
Post Office Box 176
Jefferson City, Missouri 65101

Dear Mr. Jaeger:

This letter is in answer to your opinion request in which you ask the following question:

"Is the State Park Board required by statute to insert in its park concession contracts a provision that if the net profits of the contractor for any one year exceed the sum of \$17,500, such excess shall be paid over to the State?"

You add that:

"Park Concession contracts, authorized by Section 253.080, RSMo, normally provide for specified percentages of the contractor's gross receipts in various categories of the concession to be remitted to the State. Further provision is made that if the contractor's net profits for one calendar year exceed the sum of \$17,500, 100% of such excess shall be returned to the State. The Park Board has considered removing the \$17,500 limitation in these contracts but is unsure whether it has the discretion to do so."

Section 253.080, RSMo 1969, with respect to such contracts provides:

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"1. The park board may construct, establish and operate suitable public services, privileges, conveniences and facilities on any land, site or object under its jurisdiction and control, and may charge and collect reasonable fees for the use of the same. The park board may charge reasonable fees for supplying services on state park areas. Any facilities so constructed under this provision shall only be done by appropriated funds.

"2. The park board may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under its control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas.

"3. All contracts awarded under this section shall be entered into upon the basis of competitive sealed bids. A sworn financial statement shall accompany each bid, and all contracts shall be let by the board at a regular meeting after public notice of the time of the letting. All bids submitted prior to the opening of the meeting shall be considered. Advertisements for bids in daily or weekly newspapers shall be made by the board. The board shall accept the bid most favorable to the state from a responsible and reputable person but may, for good cause, reject any bid.

"4. No contract for a period of ten years or more or a renewal thereof for such period, as provided in subsection 2, shall be finally awarded until approved by the general assembly by concurrent resolution considered and adopted as other concurrent resolutions of the general assembly.

"5. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.

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"6. Any person who contracts under this section, except under subsection 2, with the state shall keep true and accurate records of his receipts and disbursements arising out of the performance of the contract and shall permit the board and the state collector of revenue to audit them. The board and the collector of revenue shall audit the receipts and disbursement of each contract once very two years and upon the expiration of the contract. If, upon audit, it appears that the net profits of the contractor for any one year have exceeded the sum of seventeen thousand five hundred dollars, the excess shall be paid over to the state collector of revenue and may be recovered from the contractor and his sureties. For the purpose of subsections 5 and 6, no contract shall be deemed to extend to operations or management in more than one state park."
(Emphasis added)

It is clear that the portion of the legislation which we have underscored in subsection 6 "except under subsection 2," appears to nullify the requirement in question. However subsection 6 literally pertains to "[a]ny person who contracts under this section," i.e., Section 253.080, and subsection 2 constitutes the authority for such contracts. Therefore, applying the exception literally would contravene the basic rules of statutory construction that we must ascertain and give effect to the legislative intent, Turner v. Kansas City, 191 S.W.2d 612 (Mo. 1945) and avoid a construction which would convict the legislature of doing a useless and reasonless thing. Hawkins v. Smith, 147 S.W. 1042 (Mo. 1912). The letter of the statute must give way somewhat to its obvious intendment. Rutter v. Carothers, 122 S.W. 1056 (Mo. 1909).

Similar provisions with respect to audits and to maximum profits were contained in the Laws of 1961, p. 235. That is, Section 253.080 subsection 4, previously provided in part:

". . . If, upon audit, it appears that the net profits of the contractor under a contract the term of which is two years or less, for any one year have exceeded the sum of ten thousand dollars, the excess shall be paid over to the state collector of revenue and may be recovered from the contractors and his sureties. . . ."
(Emphasis added)

The present provision omitted that which is underscored above and changed the amount relating to the profit limitation. Previous

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law must be considered in our interpretation of existing law, City of St. Louis v. Williams, 139 S.W. 340 (Mo. 1911), and thus, the conclusion that we reach is that the present \$17,500 limitation applies to such park concession contracts.

Under these circumstances, the Park Board has the authority and the duty to include the \$17,500 limitation in all contracts awarded under Section 253.080 until otherwise directed by the legislature by amendment to such section.

Very truly yours,

JOHN C. DANFORTH
Attorney General